

Message Text

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SUBJ: SEABEDS

STATEMENT BY MR. JOHN NORTON MOORE, UNITED STATES REP
TO THE COMMITTEE ON THE PEACEFUL USES OF THE SEABED AND
THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

SUBCOMMITTEE II APRIL 2, 1973

MR. CHAIRMAN, AS SEVERAL SPEAKERS BEFORE THIS SUBCOMMITTEE
HAVE INDICATED, ONE OF THE IMPORTANT TASKS OF THE LAW OF THE
SEA CONFERENCE WILL BE THE PROTECTION OF THE COMMUNITY INTERESTS
IN NAVIGATION AND OVERFLIGHT. ALL NATIONS HAVE A SHARED
INTEREST IN THESE FREEDOMS. THEY ARE ESSENTIAL IN MAINTAINING
THE FLOW OF TRADE AND COMMUNICATION. THEY ARE ALSO ESSENTIAL
FOR MAINTINING A STABLE AND PEACEFUL INTERNATIONAL ORDER.

THERE ARE THREE PRINCIPAL ASPECTS OF THESE FREEDOMS. THE
FIRST IS THE PRESERVATION OF HIGH SEAS NAVIGATIONAL FREEDOMS
BEYOND THE TERRITORIAL SEA. THE SHARED INTEREST IN SUCH
FREEDOMS IS REFLECTED IN THE EMERGING CONSENSUS IN THIS
COMMITTEE THAT SUCH FREEDOMS SHOULD BE FULLY PROTECTED IN
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CONNECTION WITH ANY POSSIBLE COASTAL STATE ECONOMIC
JURISDICTION BEYOND A 12 MILE TERRITORIAL SEA, WHICH MAY BE

ADOPTED AS PART OF AN OVERALL LAW OF THE SEA SETTLEMENT.

THE SECOND ASPECT OF THESE FREEDOMS IS A TRULY MEANINGFUL RIGHT OF INNOCENT PASSAGE WITHIN AN AGREED 12- MILE TERRITORIAL SEA IN AREAS OTHER THAN STRAITS USED FOR INTERNATIONAL NAVIGATION. BOTH COASTAL STATES AND THE INTERNATIONAL COMMUNITY AS A WHOLE HAVE INTERESTS IN THESE AREAS. AS AGREEMENT TO EXTEND THE BREADTH OF THE TERRITORIAL WATERS TO 12 MILES SEEM LIKELY, AS PART OF AN OVERALL LAW OF THE SEA SETTLEMENT, IT WILL BE EVEN MORE IMPORTANT TO PROTECT THE COMMUNITY INTEREST IN NAVIGATION IN THE TERRITORIAL SEA.

THE THIRD PRINCIPAL ASPECT OF THESE NAVIGATIONAL FREEDOMS IS THE RIGHT OF VESSELS AND AIRCRAFT OF ALL NATIONS TO TRANSIT FREELY THROUGH AND OVER STRAITS USED FOR INTERNATIONAL NAVIGATION. INTERNATIONAL STRAITS FACILITATE ACCESS TO VAST AREAS OF THE OCEANS AND WITHOUT UNIMPEDED TRANSIT THROUGH SUCH STRAITS, THE LEGAL RIGHTS OF STATES AND THEIR VESSELS AND AIRCRAFT TO USE DIFFERENT PARTS OF THE OCEANS WOULD EITHER BE DENIED OR SEVERELY DIMINISHED. WE SHOULD BE CLEAR, MR. CHAIRMAN, THAT THE COMMUNITY INTEREST AT STAKE IN INTERNATIONAL STRAITS IS FAR MORE VITAL THAN SIMPLY THE RIGHT OF INNOCENT PASSAGE IN THE TERRITORIAL SEA. THE ISSUE IS NO LESS THAN WHETHER THE FREEDOMS OF THE HIGH SEAS ENJOYED BY ALL NATIONS ARE TO REMAIN MEANINGFUL.

A PRINCIPAL GOAL OF THE LAW OF THE SEA CONFERENCE MUST BE TO AGREE ON A REGIME WHICH WILL MINIMIZE THE POSSIBILITIES OF CONFLICT AMONG NATIONS, CONFLICTS WHICH MAY ARISE BECAUSE OF UNCERTAINTIES AS TO LEGAL RIGHTS AND RESPONSIBILITIES. IN VIEW OF THE IMPORTANCE OF STRAITS USED FOR INTERNATIONAL NAVIGATION, ANY REGIME FOR SUCH STRAITS WHICH DEPENDED UPON A SET OF CRITERIA THAT COULD BE SUBJECTIVELY INTERPRETED BY STRAITS STATES WOULD SOW THE SEEDS OF FUTURE CONFLICT AND UNDERCUT A MAJOR GOAL OF THE CONFERENCE. FOR THESE REASONS, MR. CHAIRMAN, IT IS COMPLETELY INAPPROPRIATE TO APPROACH THE PROBLEM OF TRANSIT THROUGH STRAITS AS THOUGH IT WERE SIMPLY A PROBLEM OF PASSAGE THROUGH THE TERRITORIAL SEA WHICH COULD BE DEALT WITH BY THE DOCTRINE OF INNOCENT PASSAGE.

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STRAITS STATES, OF COURSE, ALSO HAVE LEGITIMATE INTERESTS -- INTERESTS OF THE SAFETY OF NAVIGATION AND THE PREVENTION OF POLLUTION IN ADJACENT INTERNATIONAL STRAITS. THESE INTERESTS, LIKE THOSE OF STRAITS USERS AND THOSE WHO DEPEND ON THAT USE, MUST ALSO BE PROTECTED.

IN ORDER TO PROTECT THE INTERESTS OF ALL CONCERNED, STRAITS USERS AND STRAITS STATES ALIKE, THE UNITED STATES HAS SUBMITTED DRAFT ARTICLES WHICH CALL FOR AN AGREED MAXIMUM BREADTH OF THE

TERRITORIAL SEA OF 12 MILES, COUPLED WITH TRANSIT PROVISIONS WHICH WILL RETAIN ESSENTIAL TRANSIT RIGHTS FOR STRAITS USERS. WE HAVE FURTHER PROPOSED ESTABLISHING NEW SAFETY AND LIABILITY STANDARDS FOR THE PROTECTION OF STRAITS STATES.

AS YOU WILL RECALL, MY DELEGATION PROPOSED LAST JULY THAT THE LAW OF THE SEA TREATY PROVIDE THAT SURFACE SHIPS TRANSITING STRAITS COMPLY WITH APPLICABLE IMCO REGULATIONS AND PROCEDURES INTENDED TO PROMOTE THE SAFETY OF NAVIGATION AND THAT STATE AIRCRAFT NORMALLY COMPLY WITH SIMILAR ICAO REGULATIONS AND PROCEDURES. WE BELIEVE THAT ADOPTION OF THESE PROPOSALS WILL SUBSTANTIALLY ALLEVIATE ANY RISK OF ACCIDENTS OR POLLUTION IN INTERNATIONAL STRAITS. WE RECOGNIZE, HOWEVER, THAT THERE SHOULD ALSO BE A STRONG INCENTIVE FOR STRAITS USERS TO SCRUPULOUSLY OBSERVE THE RULES WHICH WE HAVE PROPOSED, AND FURTHERMORE, THAT IF ACCIDENTS SHOULD NEVERTHELESS OCCUR, THERE SHOULD BE ADEQUATE COMPENSATION. ACCORDINGLY, WE HAVE ALSO PROPOSED STRICT LIABILITY FOR ALL VESSELS, INCLUDING WARSHIPS AND STATE AIRCRAFT, FOR ACCIDENTS CAUSED BY DEVIATION FROM RELEVANT IMCO AND ICAO REGULATIONS. WE BELIEVE THAT THESE PROPOSALS WILL ACHIEVE A SOLUTION WHICH IS AN EQUITABLE ACCOMMODATION OF THE INTERESTS AND CONCERNS OF STRAITS USERS AND STRAITS STATES ALIKE. INDEED, THEIR ADOPTION WOULD MEAN AN INCREASE IN PROTECTION FOR STRAITS STATES.

MR. CHAIRMAN, WE HAVE OFFERED TO FOREGO, AS PART OF A NEW AGREEMENT, MANY OF THE FULL HIGH SEAS FREEDOMS PRESENTLY EXERCISED IN STRAITS WHICH WOULD BE AFFECTED BY AN EXTENSION OF THE TERRITORIAL SEA. WE SEEK TO MAINTAIN FOR OURSELVES AND THE INTERNATIONAL COMMUNITY ONLY THE LIMITED AND ESSENTIAL RIGHT OF UNIMPEDED TRANSIT DESCRIBED IN OUR UNCLASSIFIED

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DRAFT ARTICLES ALREADY BEFORE THIS SUBCOMMITTEE.

AT THE TIME OF PRESENTATION OF OUR PROPOSALS FOR SAFETY AND LIABILITY STANDARDS, WE ASKED FOR THE VIEWS AND SUGGESTIONS OF OTHER DELEGATIONS CONCERNING THESE PROPOSALS. WE RENEW THIS INVITATION AS THE BEST MEANS OF ACHIEVING A MEANINGFUL RESOLUTION OF THESE ISSUES.

MY DELEGATION IS DEEPLY DISAPPOINTED AT THE PROPOSAL DEALING WITH NAVIGATION INTRODUCED TODAY BY THE DISTINGUISHED REPRESENTATIVE OF THE PHILIPPINES. THIS PROPOSAL ASTONISHINGLY SUGGESTS AN EVEN MORE RESTRICTIVE AND SUBJECTIVE CONCEPT OF INNOCENT PASSAGE THAN UNDER EXISTING INTERNATIONAL LAW. FOR EXAMPLE, THE PROPOSAL WOULD CREATE A VAGUE NEW RIGHT " TO BE COMPENSATED FOR WORKS UNDERTAKEN TO FACILITATE PASSAGE". IT WOULD ALSO PERMIT STRAITS STATES TO IMPOSE RESTRICTIONS ON THE PASSAGE OF VESSELS WHICH, IN FACT,

POSE NO THREAT. MOST IMPORTANTLY, THE PROPOSAL CONFUSES THE ISSUE OF PASSAGE IN THE TERRITORIAL SEA IN AREAS OTHER THAN INTERNATIONAL STRAITS WITH THE VERY DIFFERENT ISSUE OF TRANSIT THROUGH AND OVER INTERNATIONAL STRAITS.

IT IS WELL KNOWN TO ALL DELEGATIONS THAT DESPITE THE CODIFICATION OF EFFORTS MADE AT THE 1958 GENEVAL CONFERENCE, UNCERTAINTIES AND DIFFICULTIES CONCERNIN THE NATURE OF INNOCENT PASSAGE HAVE CONTINUED. THE EFFECT OF THESE UNCERTAINTIES AND DIFFICULTIES WOULD BE GREATLY AMPLIFIED WERE THEY TO ACCOMPANY AN EXTENSION OF THE TERRITORIAL SEA INTO AREAS OF INTERNATIONAL STRAITS TRADITIONALLY REGARDED AS HIGH SEAS. AS REITERATED IN OUR AUGUST 10, 1972 STATEMENT, THE UNITED STATES AND OTHERS HAVE MADE IT CLEAR THAT THEIR VITAL INTERESTS REQUIRE THAT AGREEMENT ON A 12- MILE TERRITORIAL SEA BE COUPLED WITH AGREEMENT ON FREE TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION AND THESE REMAIN AMONG THE BASIC ELEMENTS OF OUR NATIONAL POLICY WHICH WE WILL NOT SACRIFICE. THE ARTICLES INTRODUCED BY THE DISTINGUISHED REPRESENTATIVE OF THE PHILIPPINES DENY THE ESSENTIAL NAVIGATIONAL FREEDOMS OF THE INTERNATIONAL COMMUNITY. THE IMPORTANT EFFORTS OF THIS COMMITTEE TO PROMOTE AGREEMENT ON ALL LAW OF THE SEA ISSUES WILL BE BETTER SERVED BY BALANCED PROPOSALS WHICH PROTECT THE ESSENTIAL NAVIGATIONAL INTERESTS OF THE INTERNATIONAL COMMUNITY WHILE ALSO RECOGNIZING THE UNCLASSIFIED

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LEGITIMATE CONCERNS OF STRAITS STATES.

THANK YOU, MR CHAIRMAN.
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